

## Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed January 20, 2004. Claims 90-91, 93-96, 98-105, 107-108, and 114-119 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner allowed claims 90-91, 93-94, 99-105, 107 and 114-119, and rejected claims 95, 96, 98 and 108. The present Response cancels claims 95, 96, and 108, leaving for the Examiner's present consideration claim 98. Reconsideration of the rejections is requested.

### I. REJECTION UNDER 35 U.S.C. §102(E) OVER *SAMANI* (U.S. PAT. NO. 5,645,599)

#### *Claims 95, 96, and 98*

The Examiner rejected claims 95, 96, and 98 under 35 U.S.C. § 102(e) as being anticipated by *Samani*. In the interest of furthering prosecution, the Applicants request cancellation of claims 95 and 96, with the intent to pursue the claimed matter contained therein in a continuation application. The Applicants respectfully traverse the rejection of claim 98.

Referring to Figures 5, *Samani* discloses “a bearing cushion **15** of suitable *elastic* material, either woven material or synthetic material” (Emphasis added). See Col. 4, lines 44-48. The cushion of *Samani* comprises an elastic material and therefore exhibits an elastic response, resuming a first shape once a compression force is removed. A shape-memory material exhibits different characteristics from that of an elastic material. For example, a device comprising shape-memory material can change shape with a change in temperature. The shape-memory device is introduced into the body at an initial temperature and allowed to change shape as the device reaches the temperature of the body. The elastic material of *Samani* does not act in the same way.

*Samani* fails to disclose a device comprising a shape-memory material. Since *Samani* fails to disclose all of the features of claim 98, *Samani* cannot anticipate claim 98 under 35 U.S.C. §102(e). Accordingly, the Applicants respectfully request the withdrawal of this rejection.

## **II. REJECTION UNDER 35 U.S.C. §102(E) OVER *KRAPIVA* (U.S. PAT. NO. 5,645,597)**

### ***Claim 108***

The Examiner rejected claim 108 under 35 U.S.C. § 102(e) as being anticipated by *Krapiva*. In the interest of furthering prosecution, the Applicants request cancellation of claim 108, with the intent to pursue the claimed matter contained therein in a continuation application.

## **III. ALLOWABLE SUBJECT MATTER**

### ***Claims 90, 91, 93, 94, 99-105, 107 and 114-119***

The Applicants appreciate the indication that claims 90, 91, 93, 94, 99-105, 107 and 114-119 are allowed.

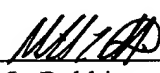
## **IV. CONCLUSION**

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned before an advisory action is issued in order to avoid any unnecessary filing of an appeal.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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